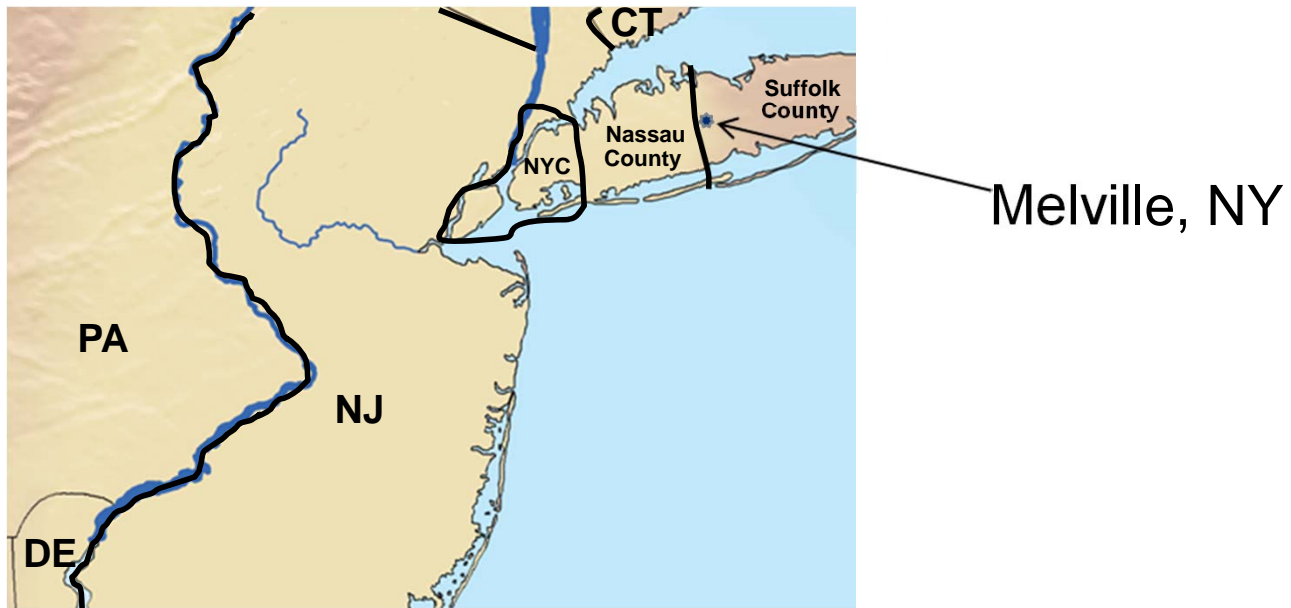


Comments on the Impact of Attorney Activity on Workers Compensation Claim Costs

September 2017

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Melville?



What will we discuss?

Goal: Examine specific examples where economic or statutory changes affected attorney activity with a consequent material effect on claim costs.

- Florida: SB 50-A and Castellanos
- Workforce Reductions

FLORIDA: SB-50A AND CASTELLANOS

Background

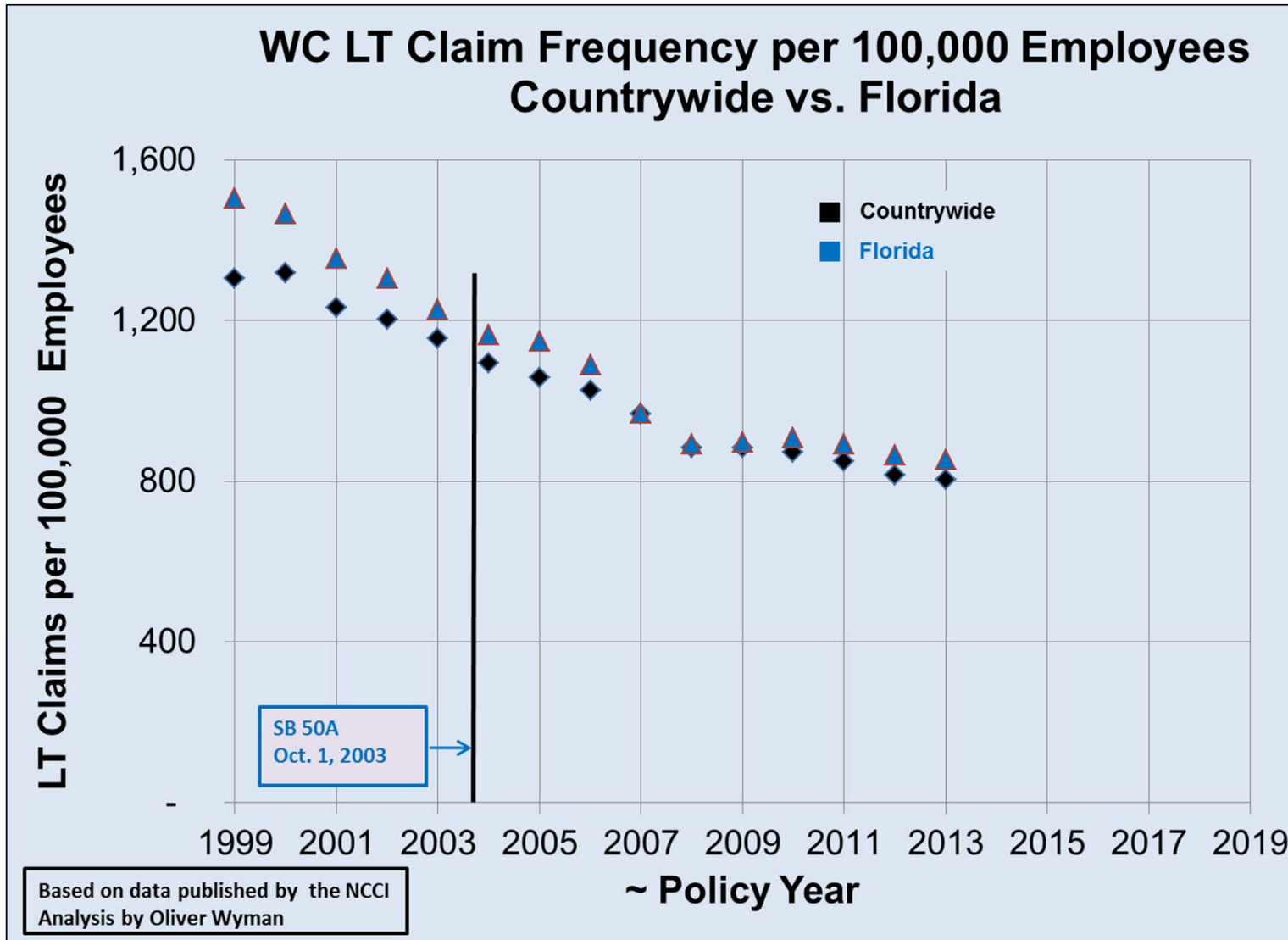
October 1, 2003: SB-50A becomes Law

- **Caps on claimant attorney fees**
- **Change in permanent total disability eligibility criteria**
- Medicare-based fee schedules
- Additional Alternative Dispute Resolution processes
- Restrictions on Independent Medical Exams

Did SB-50A affect claim frequency, claim severity, or both?

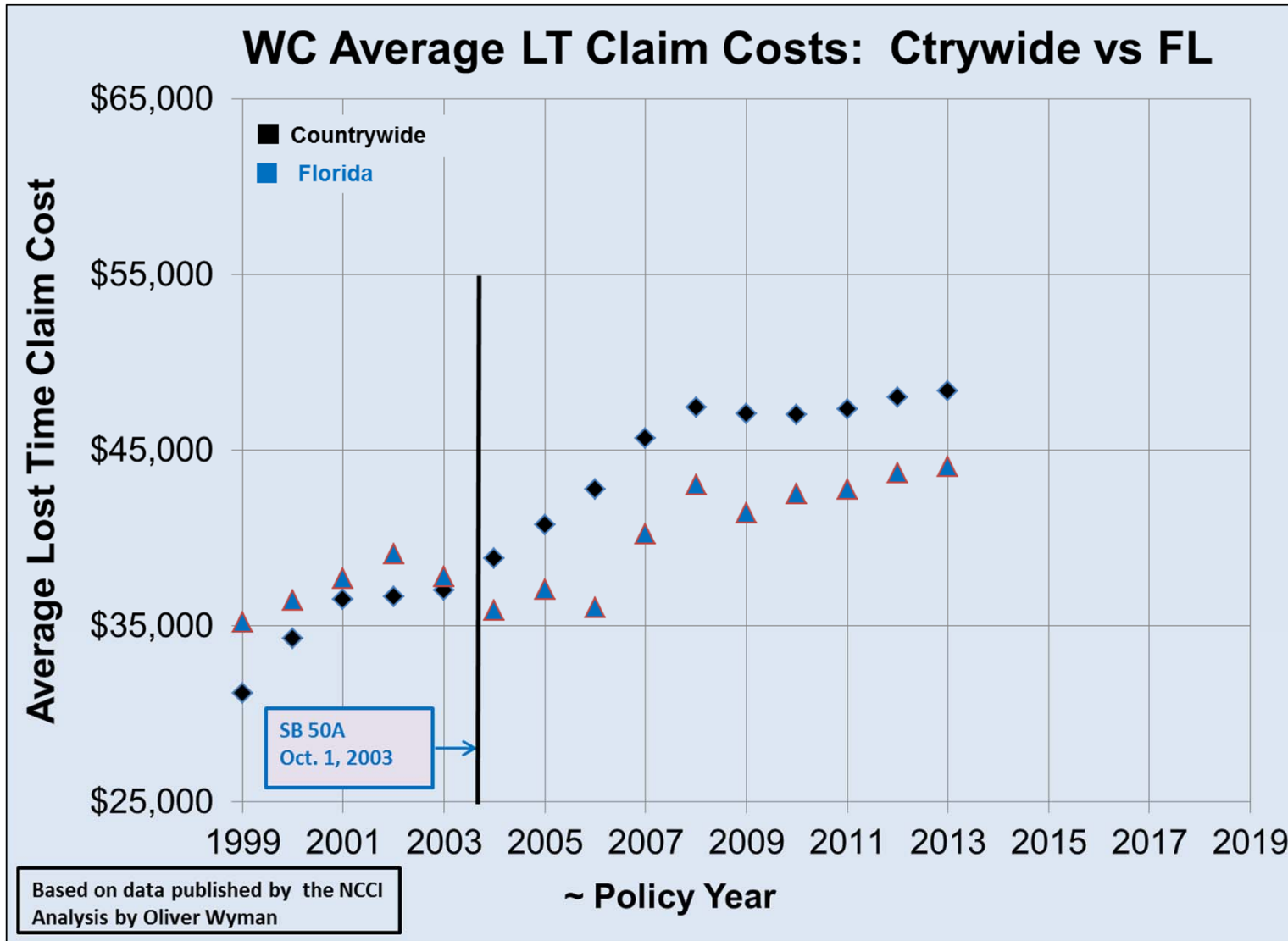
FLORIDA: SB-50A AND CASTELLANOS

SB-50A had little or no impact on claim frequency:



FLORIDA: SB-50A AND CASTELLANOS

SB-50A greatly reduced the average severity of WC claims.



FLORIDA: SB-50A AND CASTELLANOS

Data Demonstrates SB-50A Primarily Affected Severity

Recall Two Key Elements of SB-50A:

- *Caps on claimant attorney fees*
- *Change in permanent total disability eligibility criteria*

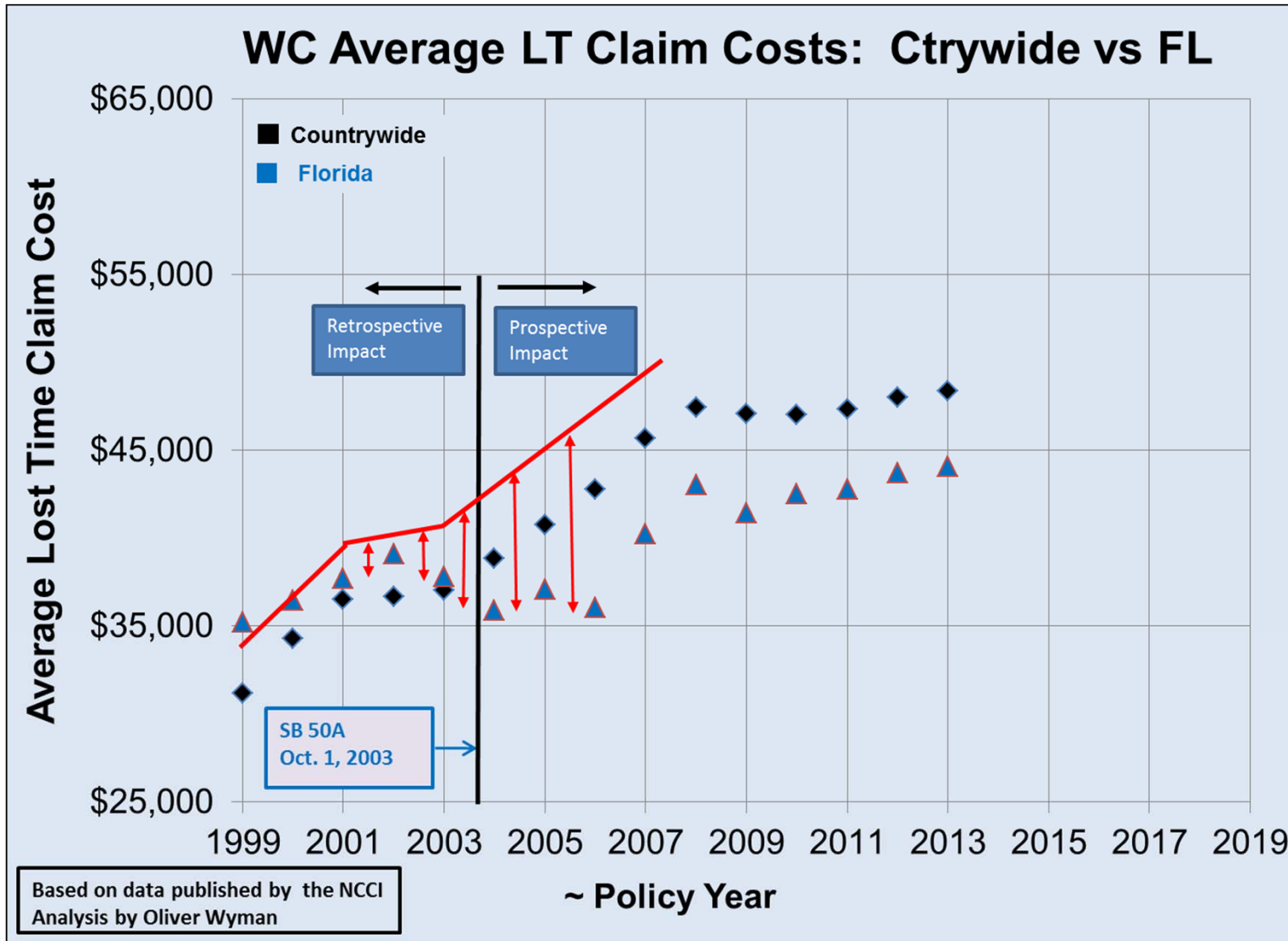
What was the impact on PTD Costs?

- Historical data shows PTD claim costs in Florida declined subsequent to SB-50A.
- Original analysis forecasted a 43.4% decrease to PTD costs.
- Data indicates PTD costs decreased significantly.
 - Impact appears to be primarily on frequency.
 - Data indicates that PTD severities actually increased.
 - PTD <1% total LT: Minimal impact on statewide average severity.

Assume changes to statewide average severity were entirely due to the *caps on attorney fees*.

FLORIDA: SB-50A AND CASTELLANOS

SB-50A Had a Prospective and Retrospective Impact



FLORIDA: SB-50A AND CASTELLANOS

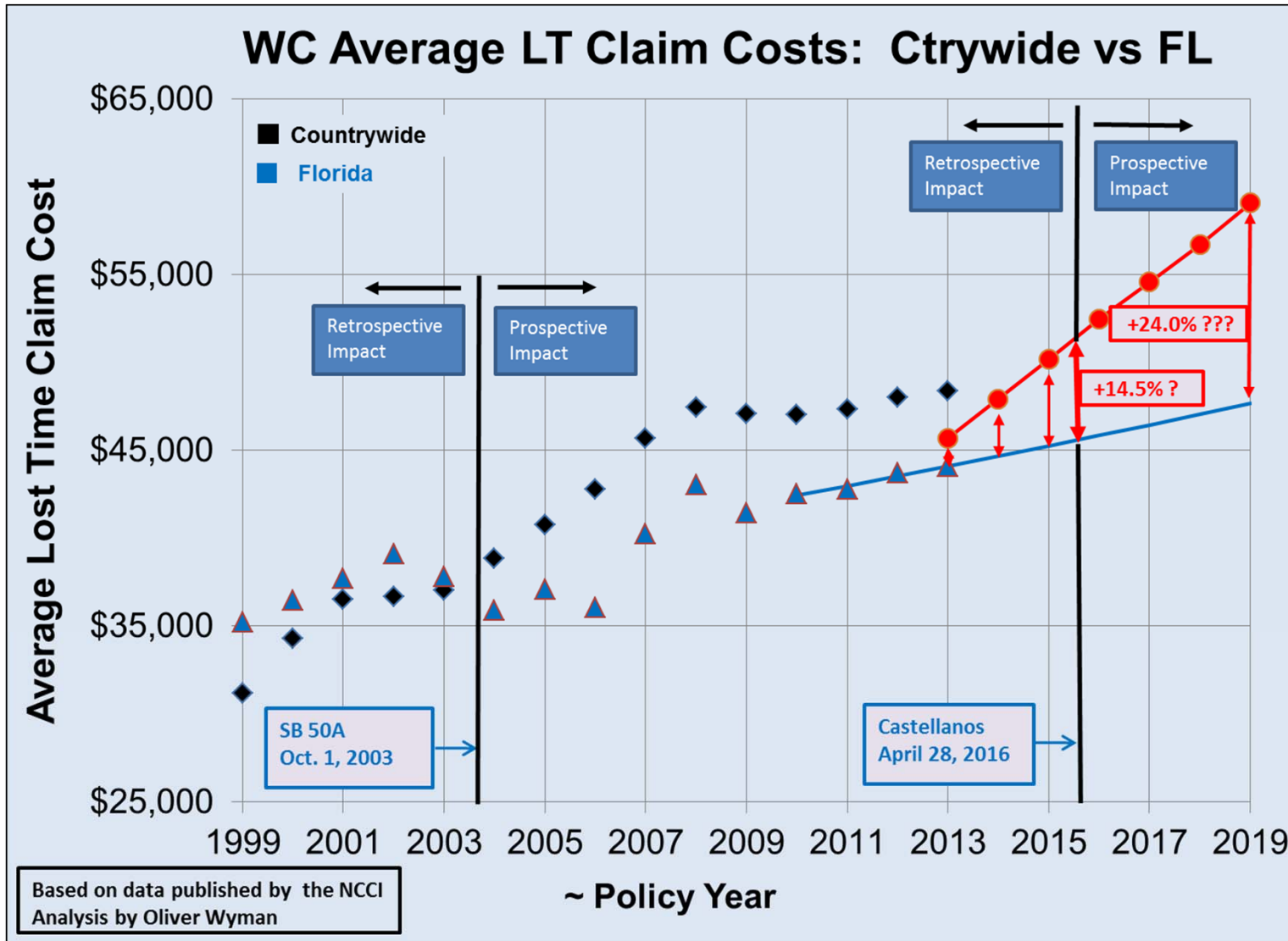
Castellanos

- On April 28, 2016, the Florida Supreme Court issued a ruling in *Marvin Castellanos v. Next Door Company* finding the attorney fee provisions of SB 50A to be unconstitutional.
- The original issue in this case centered on an award of \$164 in claimant attorney fees for 107 hours of legal work.
- The Court ruled that due process was violated because the law prevents challenges to the reasonableness of workers compensation attorney fees.
- The Court also expressed concern that without the likelihood of an adequate attorney fee award, there is little incentive for attorneys to assist claimants and therefore increases the likelihood that insurance carriers will deny benefits or act in other ways that are unfair to the claimant.

What do we expect to happen?

FLORIDA: SB-50A AND CASTELLANOS

Castellanos Will Have a Prospective and Retrospective Impact



Workforce Reduction

Background

Ship Builder

Claims Filed Primarily Under the Longshore Act

Hazardous and Dangerous Work

Repetitive Motion / Cumulative Trauma Claims

Latent Disease Claims (Asbestosis, Mesothelioma, Cancers, etc.)

Latent Disease Claims from AY 1973 continue to be reported

Hearing Loss

Traumatic Injuries

Two Locations

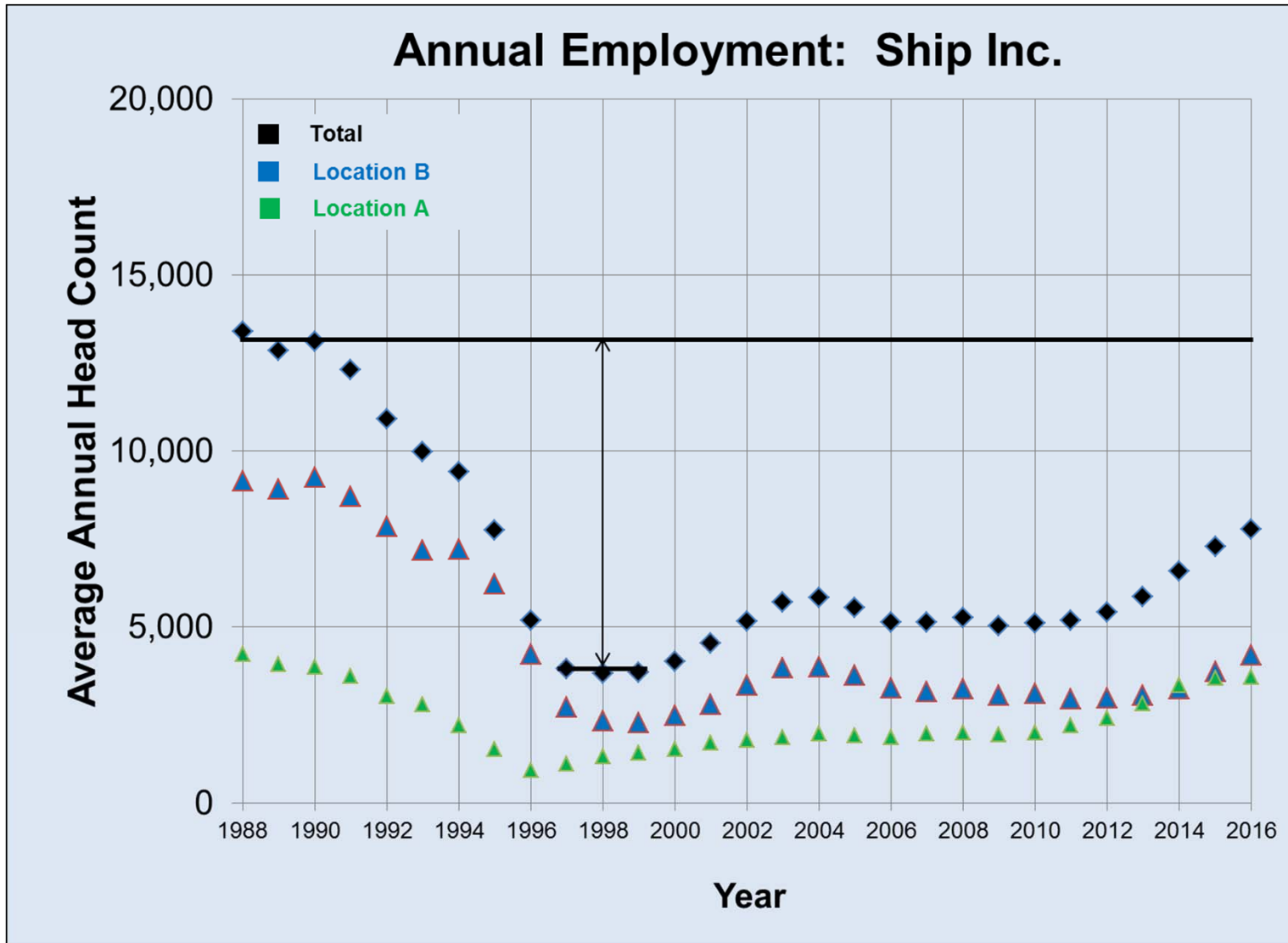
A: Hull Component Manufacture: Somewhat Hazardous

B: Hull Assembly and Installation: Extraordinarily Hazardous

75% Reduction to Workforce over 7 years

Workforce Reduction

75% Decrease to Employment from 1991 through 1997



Workforce Reduction

More Background

Small Group of Claimant Attorneys Specializing in Longshore and the Relevant State Jurisdictions

Attorneys Actively Marketed Terminated Employees AND Active Employees

More Claims

“Global Settlements”

Initial Attorney Focus was on Location B

More Hazardous Employment

Larger Terminated Employee Population

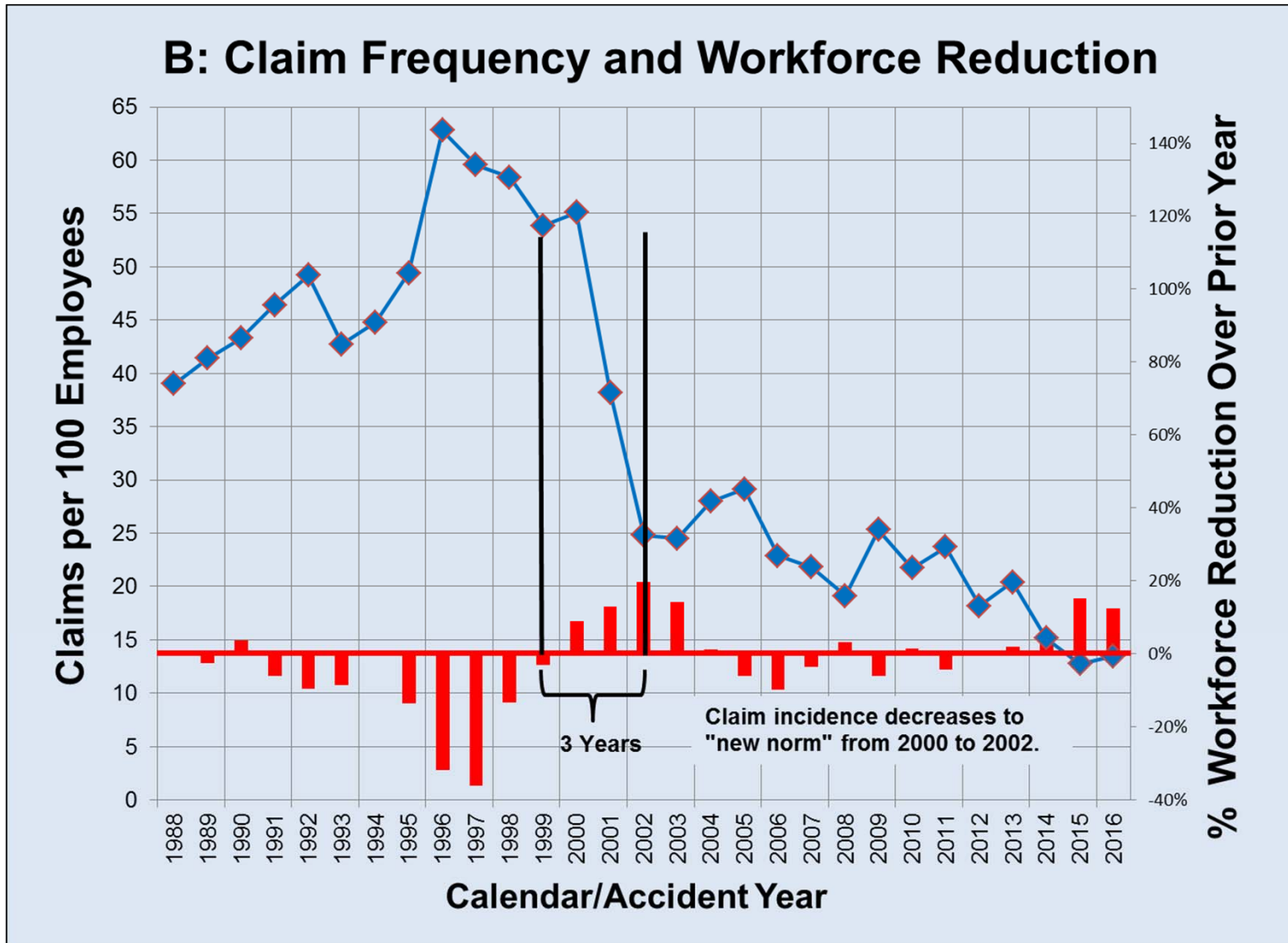
Larger Active Employee Population

Traditionally More Claims than Location A

Traditionally More Expensive Claims than Location A

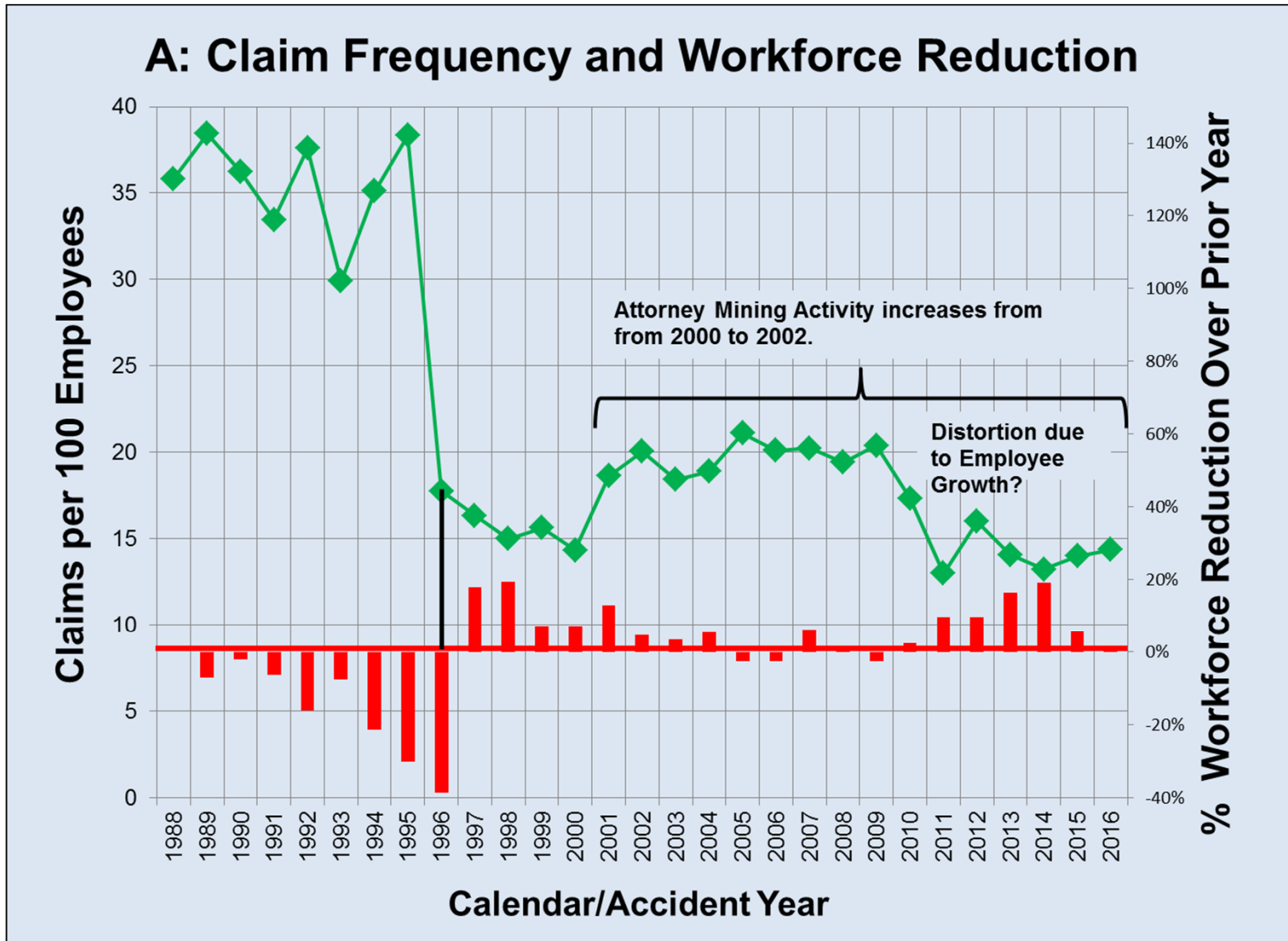
Workforce Reduction

Location B: Claim Frequency and Workforce Reduction



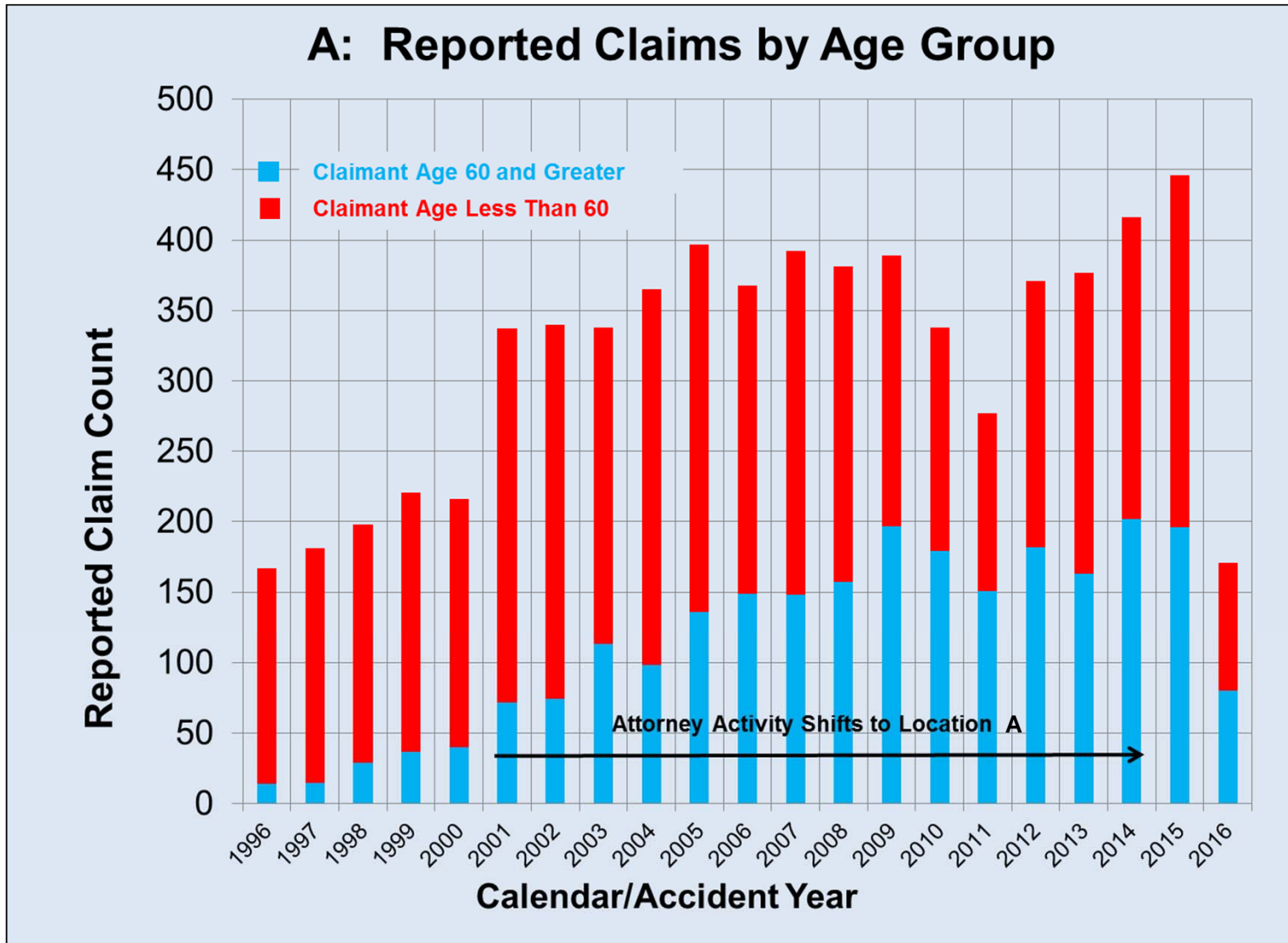
Workforce Reduction

Location A: Claim Frequency and Workforce Reduction



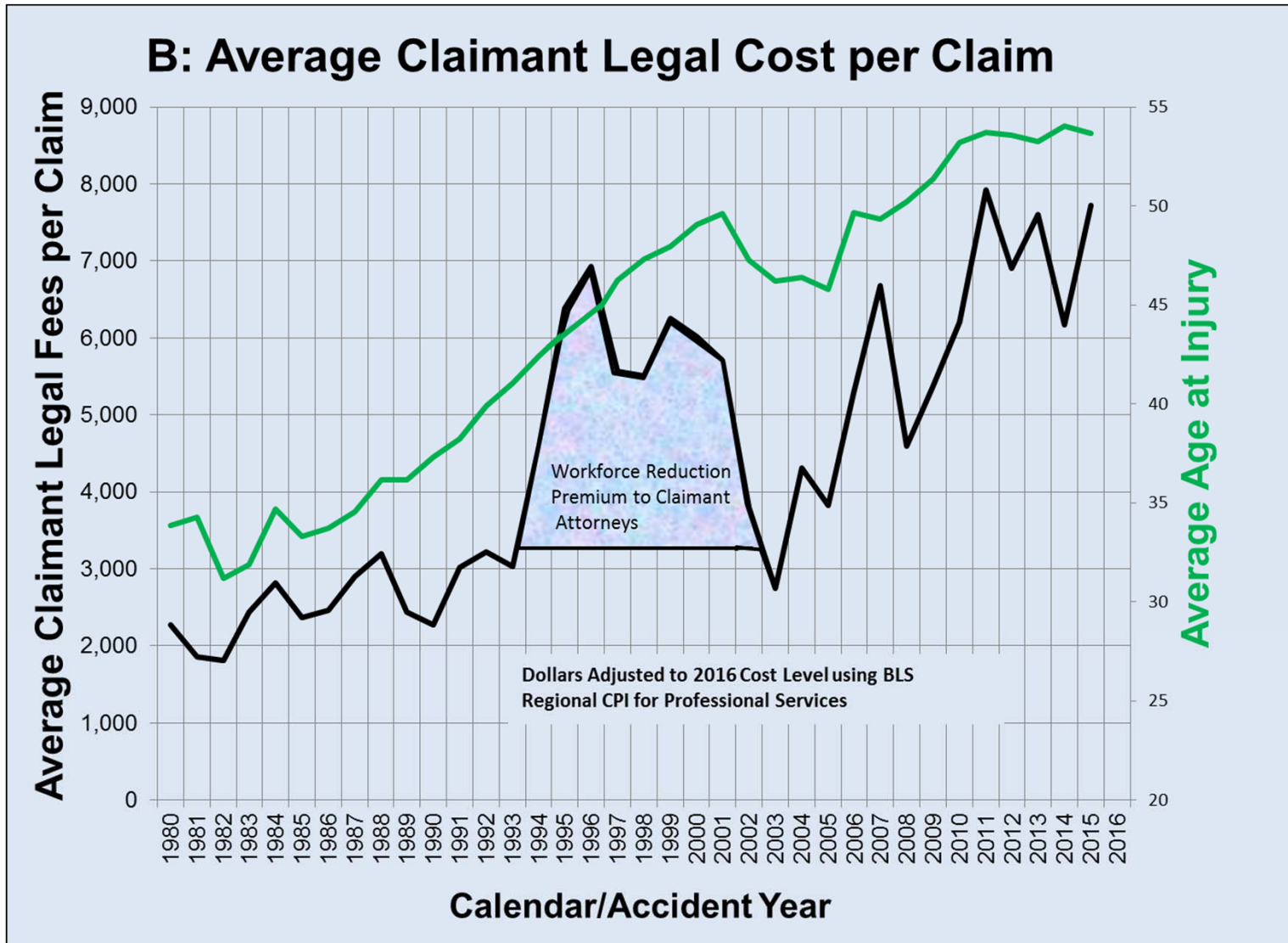
Workforce Reduction

Location A: Employee Growth in 2011 Distorts Frequency



Workforce Reduction

Location B: Average Claimant Legal Costs per Claim



Workforce Reduction

Location A: Average Claimant Legal Costs per Claim

